



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2017-0672; FRL-9986-75-Region 8]

Approval and Promulgation of Implementation Plans; South Dakota; Regional Haze 5-Year Progress Report State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of a State Implementation Plan (SIP) revision submitted by the State of South Dakota through the South Dakota Department of Environment and Natural Resources (DENR) on January 27, 2016. South Dakota's January 27, 2016 SIP revision (Progress Report) addresses requirements of the Clean Air Act (CAA or Act) and the EPA's rules that require each state to submit periodic reports describing progress towards reasonable progress goals (RPGs) established for regional haze and a determination of the adequacy of the state's existing SIP addressing regional haze (regional haze plan). The EPA is finalizing approval of South Dakota's determination that the State's regional haze plan is adequate to meet these RPGs for the first implementation period covering through 2018 and requires no substantive revision at this time.

DATES: This rule will be effective **[Insert 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2017-0672. All documents in the docket are listed on the <http://www.regulations.gov>

website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Kate Gregory, Air Program, Environmental Protection Agency, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6175, or by email at gregory.kate@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

States are required to submit a progress report in the form of a SIP revision for the first implementation period that evaluates progress towards the RPGs for each mandatory Class I federal area¹ (Class I area) within the state and for each Class I area outside the state which may be affected by emissions from within the state (40 CFR 51.308(g)). In addition, the provisions of 40 CFR 51.308(h) require states to submit, at the same time as the 40 CFR 51.308(g) progress report, a determination of the adequacy of the state’s existing regional haze plan. The first progress report is due 5 years after submittal of the initial regional haze plan. On January 21,

¹ Areas designated as mandatory Class I federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977 (42 U.S.C. 7472(a)). These areas are listed at 40 CFR part 81, subpart D.

2011, South Dakota submitted the State's first regional haze SIP in accordance with 40 CFR 51.308, which the EPA fully approved.²

On January 27, 2016, South Dakota submitted its Progress Report which, among other things, detailed the progress made in the first period toward implementation of the long-term strategy outlined in the State's regional haze plan; the visibility improvement measured at Badlands and Wind Cave National Parks, the two Class I areas within South Dakota, and at Class I areas outside of the State potentially impacted by emissions from South Dakota; and a determination of the adequacy of the State's existing regional haze plan.

In a notice of proposed rulemaking (NPRM) published on March 19, 2018 (83 FR 11946), the EPA proposed to approve South Dakota's Progress Report. The details of South Dakota's submission and the rationale for the EPA's actions are explained in the NPRM.

II. Response to Comments

Comments on the proposed rulemaking were due on or before April 18, 2018. The EPA received a total of 16 public comment submissions on the proposed approval. All public comments received on this rulemaking action are available for review by the public and may be viewed by following the instructions for access to docket materials as outlined in the ADDRESSES section of this preamble. After reviewing the comments, the EPA has determined that 15 of the comment submissions are outside the scope of our proposed action and/or fail to identify any material issue necessitating a response. We received one comment letter from the

² 77 FR 24845 (April 26, 2012). EPA fully approved South Dakota's regional haze SIP submittal addressing the requirements of the first implementation period for regional haze.

National Parks Conservation Association (NPCA), containing two significant comments that we are responding to here. Below is a summary of those comments and the EPA's responses.

Comment: In a comment letter dated April 18, 2018, the NPCA asserted that South Dakota's Regional Haze 5-Year Progress Report and the EPA's analysis of the progress report fail to meet 40 CFR 51.308(g)(5) as neither mentions the Gerald Gentleman Station in Nebraska. The commenter states that South Dakota's SIP and RPGs relied on visibility modeling from the Central Regional Air Planning Association (CENRAP) that assumed the installation of scrubbers for control of sulfur dioxide (SO₂) emissions from the Gerald Gentleman Station, which has a significant impact on South Dakota's Class I areas. The commenter suggests that the lack of requirements to install scrubbers and limit SO₂ emissions from the Gerald Gentleman Station constitutes an anthropogenic change that impedes visibility progress. Finally, the commenter suggests the lack of change in emissions at the Gerald Gentleman Station since the baseline period "impedes visibility progress" and is a "significant change" that the EPA's guidance suggests should be discussed to meet the requirements of §51.308(g)(5).

Response: We acknowledge that the Progress Report from South Dakota does not include an assessment of emission changes from the Gerald Gentleman Station. However, such an assessment is not required given the facts about South Dakota's SIP, emission trends for Gerald Gentleman, and visibility trends at the two Class I areas in South Dakota. Changes in emissions from the Gerald Gentleman Station are not "significant changes" within the meaning of this section of the Regional Haze Rule (RHR). It should be noted that, South Dakota cannot regulate emissions from the Gerald Gentleman Station in Nebraska.

Section 51.308(g)(5) of the RHR requires that periodic progress reports contain an assessment of any significant changes in anthropogenic emissions within or outside the state that have occurred during the implementation period including whether such changes were anticipated and whether they have limited or impeded progress in reducing emissions and improving visibility. The EPA provided guidance that summarized and clarified the requirements for progress reports in a document titled *General Principles for the 5-Year Regional Haze Progress Reports for the Initial Regional Haze State Implementation Plans (Intended to Assist States and EPA Regional Offices in Development and Review of the Progress Reports)*.³ In relation to §51.308(g)(5), the guidance states that “[t]his requirement is aimed at assessing whether any such significant emissions changes have occurred within the state over the 5-year period since the SIP was submitted, and whether emissions increases outside the state are affecting a Class I area within the state adversely.”⁴ Further, the guidance principles specify that a “significant change” that can “limit or impede progress” could be “either (1) a significant unexpected increase in anthropogenic emissions that occurred over the 5-year period (that is, an increase that was not projected in the analysis for the SIP), or (2) a significant expected reduction in anthropogenic emissions that did not occur (that is, a projected decrease in emissions in the analysis for the SIP that was not realized).”⁵

The “significance” of a change in emissions, if there is a change, is evaluated on a case-

³ U.S. Environmental Protection Agency Office of Air Quality Planning and Standards Air Quality Policy Division Geographic Strategies Group, April 2013.

⁴ Guidance Principles, p. 15.

⁵ Ibid.

by-case basis depending on the factual context. It is clear from both §51.308(g)(5) and the guidance that significance depends on whether a change in emissions is large enough to have limited or impeded progress in improving visibility, with the adopted RPGs being important benchmarks for progress.

In this instance, there have not been significant changes in emissions within the meaning of §51.308(g)(5). First, there has not been a “significant unexpected increase” in emissions from outside South Dakota, *i.e.*, from the Gerald Gentleman Station. While this first questions is perhaps more relevant where a new or modified source has increased emissions over what was projected in the SIP, we nonetheless assess it in respect to Gerald Gentleman Station. A review of emissions data submitted to the EPA Air Markets Program Data indicates that the annual SO₂ emissions from Units 1 and 2 decreased in the 5-year period from the submittal of the initial SIP. In the 5-year period before submittal of the initial SIP, 2006 through 2010, the annual SO₂ emissions from the facility averaged 30,597 tons per year.⁶ In the following 5-year period, 2011 through 2016, the annual SO₂ emissions averaged 26,696 tons per year.⁷ The average annual SO₂ emissions between the two periods decreased by 3,901 tons per year.⁸ As such, we conclude that there has not been a significant unexpected increase in anthropogenic emissions from the Gerald Gentleman Station.

Second, there was not a significant expected reduction in anthropogenic emissions that

⁶ Refer to spread sheet in the docket titled “Gerald Gentleman Station Annual Emissions from AMPD.xlsx” located in the docket.

⁷ Ibid.

⁸ Because no new SO₂ controls have been installed at the Gerald Gentleman Station, the reduction in emissions between the two time periods, 3,901 tons per year, is primarily due to a decrease in heat input.

did not occur. As a preliminary matter, we acknowledge that the RPGs for South Dakota's Class I areas are based on the assumption that SO₂ emissions from the Gerald Gentleman Station would be reduced by the application of scrubbers that achieve the "presumptive BART" emission rate of 0.15 lb/MMBtu.⁹ This assumption was built into the projected emission inventory for air quality modeling used to establish RPGs.¹⁰ However, this occurred before Nebraska made its BART determination. It also occurred before Nebraska completed its consultation with other states, including South Dakota, in the development of its emission control strategies.¹¹ In the Agency's final action on Nebraska's Regional Haze SIP, the EPA addressed the disparity between the modeling assumptions for South Dakota's RPGs and the SO₂ BART emission limit the EPA chose for the Gerald Gentleman Station.¹² In response to comments on this issue, the Agency noted that "South Dakota had the opportunity to comment on Nebraska's draft BART permits as well as the overall regional haze SIP, and did not ask for additional emission reductions from Nebraska."¹³ The Agency concluded that "Nebraska did establish a BART limit for the Gerald Gentleman Station and informed South Dakota that its BART determination deviated from what was included in the modeling [for RPGs], [and] the fact that the final BART determination varied from the predictions is not grounds for

⁹ For comparison, the SO₂ annual emission rate (in lb/MMBtu) at the Gerald Gentleman Station was about 0.58 lb/MMBtu during 2002, which was the period used as the baseline by Nebraska when it developed its SIP. The annual emission rate in lb/MMBtu has not changed appreciably since that time.

¹⁰ The emissions projected for the Gerald Gentleman Station by CENRAP were incorporated into the Western Regional Air Partnership (WRAP) reasonable progress modeling for 2018 (referred to as the PRP18b scenario). The RPGs for the South Dakota Class I areas were determined by the WRAP modeling.

¹¹ 40 CFR 51.308(d)(3)(i) requires that a state consult with another state if its emissions are reasonably anticipated to contribute to visibility impairment at that state's Class I area(s), and that a state consult with other states if those other states' emissions are reasonably anticipated to contribute to visibility impairment at its Class I areas.

¹² 77 FR 40150 (July 6, 2012).

¹³ Ibid, 40155.

disapproving either SIP.”¹⁴ Indeed, the content of the long-term strategy (including BART controls) determines the RPGs, not the opposite case. If not for the difference in timing between the air quality modeling for the RPGs and Nebraska’s BART determination, South Dakota’s RPGs would have reflected Nebraska’s BART determination for the Gerald Gentleman Station. Put more concisely, the SO₂ BART requirement for Gerald Gentleman Station is not predicated on an assumption that was made in the modeling analysis before BART was determined, but rather on the control measures that were ultimately agreed upon between Nebraska and South Dakota through the requisite consultation process.

Nonetheless, in the Agency’s final action for Nebraska, the EPA disapproved the SO₂ BART determination for the Gerald Gentleman Station because the State did not comply with the EPA’s regulations. The EPA also disapproved Nebraska’s long-term strategy insofar as it relied on the deficient SO₂ BART determination at the Gerald Gentleman Station. To address these deficiencies, in the same action, the EPA promulgated a Federal Implementation Plan relying on the Cross-State Air Pollution Rule (CSAPR, or “transport rule”) as an alternative to BART for SO₂ emissions from Gerald Gentleman Station,¹⁵ with the result that the long-term strategy for Nebraska does not require that SO₂ scrubbers be installed at the Gerald Gentleman Station to meet BART. Again, the RPGs are intended to reflect the emission reductions in states’ long-term strategies. The fact that Nebraska’s long-term strategy ultimately contains a different BART emission limit for the Gerald Gentleman Station than initially assumed does not mean that any

¹⁴ Ibid.

¹⁵ 40 CFR 52.143.

difference between the two constitutes “a significant expected reduction in anthropogenic emissions that did not occur.”

The guidance further clarifies that the requirement in §51.308(g)(5) is “aimed at assessing . . . whether emissions increases outside the state are affecting a Class I area within the state *adversely*. For those Class I areas where there is a significant overall downward trend in both visibility and nearby emissions, we expect that this assessment will point to those trends in support of a simple negative declaration satisfying this requirement” (emphasis added).¹⁶ This means that if aggregate emissions influencing the affected Class I areas are significantly declining and visibility conditions are significantly improving, an upward “change” for one contributing source relative to expectations is not significant. We accordingly turn to the topic of aggregate emissions and visibility trends for the Class I areas in South Dakota.¹⁷

In the Progress Report, South Dakota compared the most recent updated emission inventory data available at the time of Progress Report development with the baseline emissions inventory used in the modeling for the regional haze plan. The State’s comparison showed that the statewide emissions of key visibility impairing pollutants, including SO₂, had declined. For example, between the baseline emission inventory and the most recent updated emission inventory of 2011, South Dakota found that anthropogenic SO₂ emissions declined by 8,285 tons per year. The emissions trends do not suggest any deficiencies in South Dakota’s SIP that would affect achievement of the RPGs for Wind Cave and Badlands National Parks.

¹⁶ Principles, p. 15.

¹⁷ 83 FR 11949-11950 (March 19, 2018).

In the Progress Report, South Dakota provided baseline visibility conditions (2000–2004), current conditions based on the most recently available visibility monitoring data available at the time of Progress Report development, the difference between these current visibility conditions and baseline visibility conditions, and the change in visibility impairment from 2009–2013.¹⁸ In order to further assess the trend in visibility as it relates to §51.308(g)(5), the EPA has expanded on the analysis of visibility included in South Dakota’s Progress Report. In addition to the information and analysis provided in the Progress Report, Table 1 below presents updated Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring data which shows that visibility for the two Class I areas in the State, Badlands and Wind Cave National Parks, has continued to improve beyond the 2009-2013 period considered by South Dakota. Table 1 shows a continued downward trend in visibility impairment (in deciviews) at both Badlands and Wind Cave National Parks from the baseline time period (2000 – 2004) to the most current time period (2012 – 2016).

Table 1: Baseline Visibility, Current Visibility, Visibility Changes, and 2018 RPGs in South Dakota’s Class I Areas (deciviews)¹⁹

Class I Area	Baseline (2000-2004)	Current (2007-2011)	Difference (Baseline vs. Current)	More Current (2009 - 2013)	Difference (Baseline vs. More Current)	Most Current (2012 - 2016)	Difference (Baseline vs. Most Current)	2018 RPG ²⁰
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¹⁸ Ibid.

¹⁹ IMPROVE Data, Federal Land Manager Environmental Database. See ‘Badlands and Wind Cave IMPROVE Table.xlsx’, available in docket.

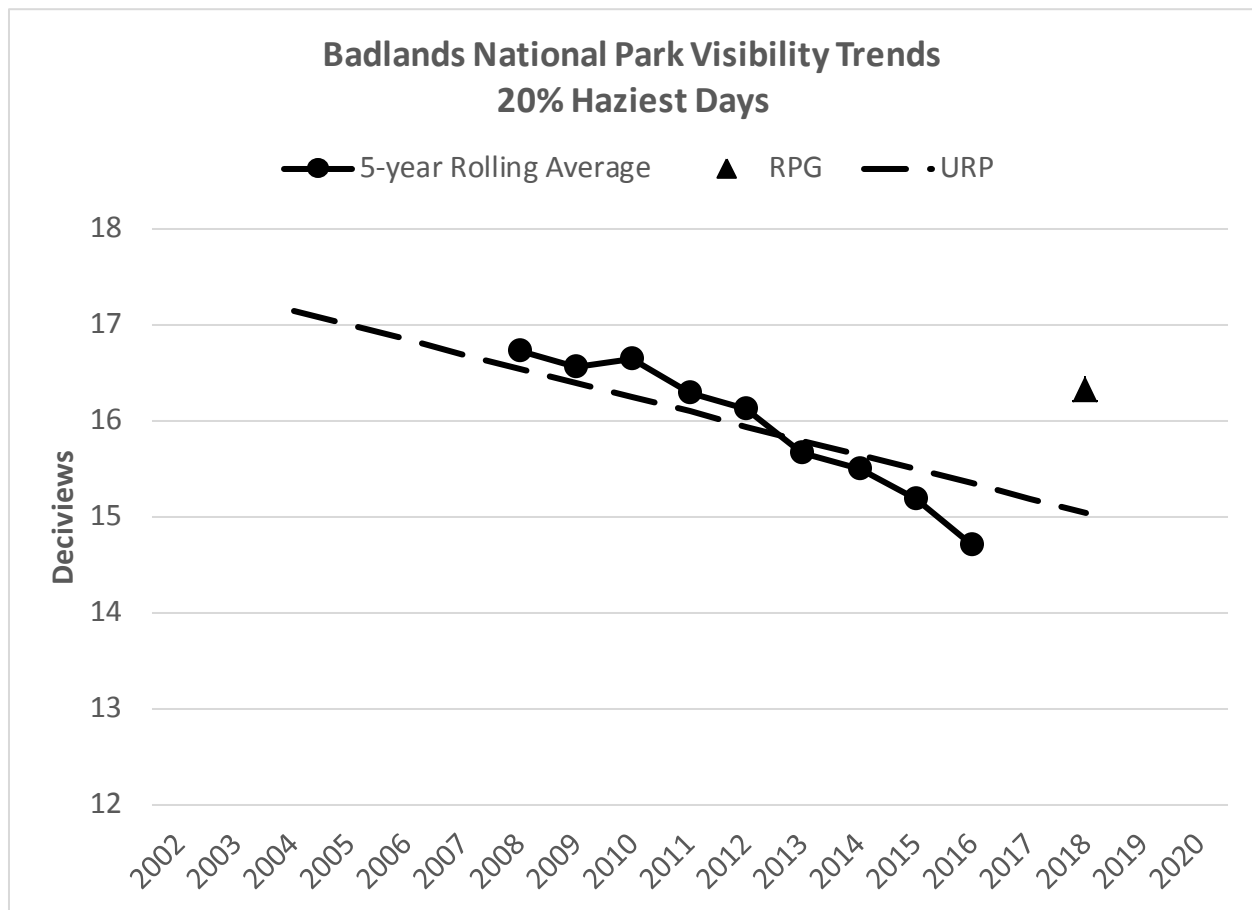
²⁰ 76 FR 76646, 76664 (April 26, 2012).

Badlands National Park								
20% Worst Days	17.1	16.3	-0.8	15.7	-1.4	14.7	-2.4	16.3
20% Best Days	6.9	6.6	-0.3	5.8	-1.1	5.5	-1.4	6.6
Wind Cave National Park								
20% Worst Days	15.8	14.9	-0.9	14.2	-1.6	13.6	-2.2	15.2
20% Best Days	5.1	4.4	-0.7	4.0	-1.1	3.6	-1.5	5.0

In Figures 1 and 2 below, in addition to comparing visibility improvement to the 2018 RPGs, we also compare monitored visibility (as a 5-year rolling average) to the Uniform Rate of Progress (URP). As described in the RHR, the URP is the uniform rate of visibility improvement that would need to be maintained during each implementation period in order to attain natural visibility conditions by the end of 2064.²¹ While the RHR does not require that states compare monitored visibility to the URP as part of their progress reports, the EPA has done so here because it is instructive when considering visibility trends in the context of §51.308(g)(5). Figures 1 and 2 show that the visibility in recent years for both Badlands and Wind Cave National Parks is well below the RPGs. For example, for Badlands National Park, the 2011 through 2016 5-year rolling average of the 20% haziest days is 14.7 deciviews, which is well below the 2018 RPG of 16.3 deciviews. Moreover, the visibility for both Class I areas is below the URP in recent years; at Badlands National Park, the 5-year rolling average of the 20% haziest days is below the URP beginning in 2012 and extending through the most recent year of available IMPROVE data (2016). Similar trends are apparent for Wind Cave National Park. As with the emissions trends, the visibility trends do not suggest any deficiencies in South Dakota's SIP that would adversely affect achievement of the RPGs for Wind Cave and Badlands National Parks.

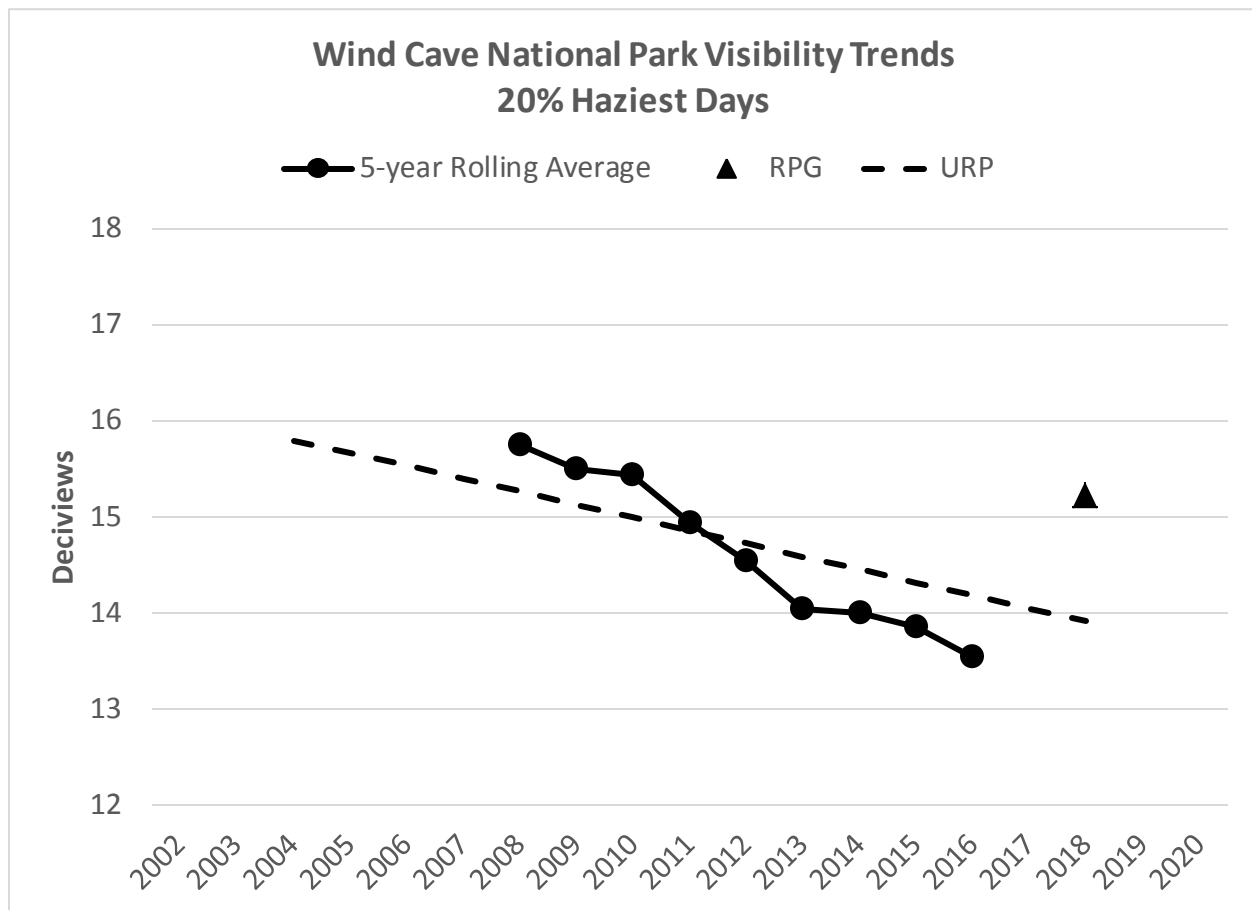
²¹ 40 CFR 51.308(f)(1)(vi)(A).

Figure 1: Badlands National Park Visibility Trends, 20% Hazeiest Days²²



²² IMPROVE Data, Federal Land Manager Environmental Database. See 'Badlands and Wind Cave IMPROVE Visibility Trends.xlsx,' available in docket.

Figure 2: Wind Cave National Park Visibility Trends, 20% Haziest Days²³



As previously stated, progress relative to the adopted RPGs is an important benchmark in assessing whether an increase in the Gerald Gentleman Station's SO₂ emissions relative to the expectations inherent in the SIP has "limited or impeded progress in improving visibility." While there would likely have been more progress if the Gerald Gentleman Station's SO₂ emissions had been reduced even more over time than they have been, in the context of improvements already

²³ Ibid.

in the first implementation period relative to the RPGs and the URP for both Class I areas in South Dakota, we do not consider any lack of emission reductions from the Gerald Gentleman Station as having limited or impeded progress in improving visibility.

In summary, we find that there has been no significant change in anthropogenic emissions relative to what was expected under South Dakota's regional haze SIP. Moreover, even if there had been such a change, emissions and visibility trends do not suggest any deficiencies in South Dakota's SIP that would affect achievement of reasonable progress for Wind Cave and Badlands National Parks. Given our conclusions regarding §51.308(g)(5) here, we find that the absence of a discussion of the Gerald Gentleman Station is not a failure to report on "significant changes in anthropogenic emissions" as that term is used in §51.308(g)(5) nor a shortcoming in South Dakota's Progress Report that requires our disapproval of the Progress Report. Consequently, consistent with the RHR and our guidance principles, we are finalizing our finding that South Dakota has met the requirements of §51.308(g)(5).²⁴

Comment: The NPCA also asserts that "EPA has previously identified the need for consultation between South Dakota and Nebraska in the next planning period regarding the impacts of the Gerald Gentleman Station on South Dakota's Class I areas," and asks the EPA to "work with South Dakota to include a discussion of the Gerald Gentleman Station in its progress report."

Response: The Progress Report that is the subject of today's action addresses the requirements of the first regional haze planning period. When adopting long-term strategies and establishing

²⁴ Because we are finding that South Dakota has not failed to report on "significant changes in anthropogenic emissions" as that term is used in §51.308(g)(5), we have not needed to reach a conclusion as to whether such a failure in this particular situation would be so important that it would require disapproval of the Progress Report.

RPGs for the second regional haze planning period, extending to 2028, the RHR requires that states once again “consult with those states that are reasonably anticipated to cause or contribute to visibility impairment in [] mandatory Class I area[s].”²⁵ As such, South Dakota will have an opportunity to consult with Nebraska regarding SO₂ controls for the Gerald Gentleman Station in the second planning period. Moreover, nothing in this final rule would prevent Nebraska, in consultation with South Dakota or other states, from assessing the need for SO₂ controls at the Gerald Gentleman Station as part of its long-term strategy for the second planning period.

Comment: The NPCA also asserts that the EPA does not adequately address in the NPRM South Dakota’s progress towards investigating and developing a smoke management plan.²⁶ The NPCA asserts that “EPA’s analysis incorrectly states that ‘The Progress Report presents the extensive information collected and analyzed to investigate the impacts of a smoke management plan’.”²⁷

The NPCA acknowledges that the South Dakota Progress Report discusses the impact of prescribed fire at Wind Cave National Park, but asserts that the progress report does not mention a smoke management plan specifically. The commenter additionally asserts that the progress report does not include an “update or information about South Dakota’s progress towards investigating and developing a smoke management plan.”²⁸ Finally, the commenter requests that the EPA work with South Dakota to include an update on South Dakota’s examination of a

²⁵ 40 CFR 51.308(f)(2)(ii).

²⁶ National Parks Conservation Association (NPCA) Comment Letter, p.2.

²⁷ Ibid.

²⁸ Ibid.

smoke management plan as the NPCA asserts that 40 CFR 51.308(g)(1) requires that the status of all control strategies be included in the SIP.

Response: As this response to comment will show, South Dakota is committed to investigating the impacts of prescribed burns and wildfires and considering smoke management practices and a smoke management plan; however, there is no smoke management plan currently included in the SIP. Insofar as the comment implicates the adequacy of the State's existing Regional Haze SIP, we note that our review of the Progress Report is not a second review of the adequacy of that SIP, as the public already had an opportunity to review and comment on it and the EPA approved the SIP as meeting the requirements of 40 CFR 51.308(d)(3)(v)(E). However, since South Dakota committed to investigating these issues, it was appropriate for the State to include an update on this investigation in the Progress Report and we find that the State did so. Contrary to commenters' assertions, the SIP explains that the State will:

- “[I]nvestigate the impacts that a smoke management plan for wild fires and prescribed burns will have on the 20% most impaired days” within the first planning period of 2013”;
- Investigate and determine whether the “burning of grass in and around the Class I areas” warrants being covered under a smoke management plan”; and
- Review IMPROVE data for a recent prescribed fire to see what kind of impact the fire had on the organic carbon mass concentration and to some extent the ammonia sulfide and ammonia nitrate levels.

Finally, the SIP explains that it is DENR's “intention” to

[I]nvestigate these prescribed burns as well as other wildfires and planned prescribed burns to determine at what level (e.g., size of burn, distance from the Class I areas, combustible material) should a wildfire or prescribed fire be included in the smoke management plan and what best management practices can be used to minimize their impacts on the 20% most impaired days in the Class I areas. The results of this analysis will be adopted in the Regional Haze State Implementation Plan as part of our long term strategy. DENR will work with the federal land managers, other state agencies, and local governments during the development and implementation of the smoke management plan.²⁹

Contrary to the commenter's assertions, the Progress Report, as explained in the Regional Haze 5-Year Progress Report NPRM, describes that the State has taken the following steps so far to investigate the impacts of prescribed burns and natural fire on visibility in the first planning period. The impacts of prescribed fires on the 20% most impaired days at Wind Cave were investigated using the IMPROVE data that was presented in their progress report.³⁰

The State also reviewed IMPROVE data for two recent prescribed fires to see what kind of impact the fires had on the organic carbon mass concentration and to some extent the ammonium sulfide and ammonium nitrate levels. This data shows the impact of two prescribed fires conducted by the National Park Service (NPS) at Wind Cave National Park in 2009 and

²⁹ 76 FR 76671 (December 8, 2011).

³⁰ South Dakota Progress Report, Table 3-28, p.31 and Table 3-29, p. 33.

2010.³¹ The two examples of the IMPROVE data that show that the NPS prescribed fires contributed to high levels of both particulate organic mass and elemental carbon on both days.³² Finally, the Progress Report shows that natural fire has been decreasing in its impact.³³

Furthermore, regarding the State's intention to develop and implement the smoke management plan, since the publication of the NPRM, we learned that the State of South Dakota reconfirmed their intention regarding the smoke management plan,³⁴ as is described in its SIP to participate in a Western States Air Resources Council (WESTAR) smoke management workgroup.

Finally, as described in South Dakota's progress report and the NPRM, the State has worked in coordination with Federal Land Managers to mitigate the impacts of prescribed fires. In its Progress Report, the State explains that "DENR and Federal Land Managers in South Dakota have improved coordination and communications over the past few years and plan to continue that effort to help mitigate the impacts of prescribed fires" at Wind Cave and Badlands National Parks.³⁵

In conclusion, as explained above, we find the State has provided an adequate description of the status of the State's investigation of smoke management measures. The State has investigated both prescribed fire and wildfire and the impact of fire on the 20% most impaired

³¹ South Dakota Progress Report, p. 29.

³² South Dakota Progress Report, Table 3-28, p.31 and Table 3-29, p. 33.

³³ South Dakota Progress Report, Table 3-28, p.31 and Table 3-29, pp. 17, 19, 20, 21, 24.

³⁴ Memo to File EPA-R08-OAR-2017-0672, available in docket.

³⁵ South Dakota Progress Report, pp. 41-42, Appendix B, pp. B-2 - B-3. At the suggestion of the National Park Service, the DENR also looked at the Fire Emissions Tracking System and noted that it may be a useful tool going forward as the DENR continues to track prescribed fires and their impacts on the Class I areas.

days at Class I areas, reviewed IMPROVE data, showed continued collaboration with Federal Land Managers, and provided a description of their intention to investigate, develop and implement and a smoke management plan as is described in their SIP. Accordingly, we clarify and confirm our proposed finding that South Dakota has adequately addressed its SIP commitment.

III. Final Action

EPA is finalizing without revisions its proposed approval of South Dakota's January 27, 2016 Progress Report as meeting the applicable regional haze requirements set forth in 40 CFR 51.308(g) and 51.308(h).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct

costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days after date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Douglas Benevento,
Regional Administrator,
Region 8.

40 CFR part 52 is amended as follows:

PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart QQ — South Dakota

2. Section 52.2170(e) is amended by adding a new entry for XXIII. Regional Haze 5-Year Progress Report in numerical order to read as follows:

§ 52.2170 Identification of plan.

* * * * *

(e) * * *

Rule title	State effective date	EPA effective date	Final rule citation, date	Comments
* * * * *				
XXIII. Regional Haze 5-Year Progress Report	Submitted 01/27/2016	[Insert date 30 days after date of publication in the Federal Register]	[Insert Federal Register citation], [Insert Federal Register date of publication]	

[FR Doc. 2018-26179 Filed: 11/30/2018 8:45 am; Publication Date: 12/3/2018]